

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

JUL - 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Access Charge Reform )  
 )  
Reform of Access Charges )  
Imposed by Competitive )  
Local Exchange Carriers )  
\_\_\_\_\_ )

CC Docket No. 96-262 ✓

**OPPOSITION OF SPRINT CORPORATION**

Sprint Corporation ("Sprint") hereby opposes the June 28, 2001 petition of TDS Metrocom, Inc. ("TDS Metrocom") for stay of the Commission's *Seventh Report and Order*, FCC 01-146 issued April 27, 2001 in this proceeding (*Seventh Report*).<sup>1</sup> Sprint respectfully requests that the petition be denied and in support thereof states as follows.

TDS Metrocom is the latest so-called competitive local exchange carrier ("CLEC") that seeks to have the Commission stay the *Seventh Report* which become effective on June 20, 2001, 8 days before TDS Metrocom filed its petition. Previously, on June 18, 2001 MPower and North County ("MPower/North County") filed a stay petition with the Commission. Four days later on June 22, they filed an emergency motion for a stay pending judicial review or in the alternative expedited consideration with the D.C. Circuit. TDS MetroCom's petition here came two days after the Commission submitted its opposition to the emergency stay motion and on the same day

<sup>1</sup> AT&T and Sprint have petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the *Seventh Report*. *AT&T v. FCC and USA*, Case No. 01-1244 and *Sprint v. FCC and USA*, Case No. 01-1263. In addition, two CLECs -- MPower Communications and North County Communications -- have jointly filed a Petition for Review of the Seventh Report with the D.C. Circuit. *MPower and North County v. FCC and USA*, Case No. 01-1280.

No. of Copies rec'd 014  
List A B C D E

that the Court entered an Order in which it denied the motion in its entirety finding that the petitioners had not satisfied the stringent standards required for a stay or expedition. Order filed June 28, 2001 in Case No. 01-1280.

Grant of the stay, of course, would enable TDS Metrocom and all other CLECs to continue to exploit their market power to the detriment of the IXC's and the IXC's customers in the provision of switched access to IXC's by charging rates above the already generous benchmark switched access rates prescribed by the Commission in the *Seventh Report*. But, the grant of a stay is clearly unwarranted since TDS MetroCom has failed to meet the stringent standards required to secure such relief. *See, e.g., Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). TDS MetroCom's arguments here are similar to those set forth by MPower/North County in their stay petition to the D.C. Circuit. In fact, TDS MetroCom relies upon the MPower/North County motion for a stay in support of its petition here. Petition at 1-2. The Commission argued to the Court -- and the Court agreed -- that those arguments did not justify a stay. The Commission should reach the same conclusion here.

As was the case with the MPower/North County petition, TDS MetroCom's "arguments on the merits ignore much of the pertinent analysis and discussion in the FCC's Order, and in any event are unavailing." Response of FCC in Case No. 01-1280 at 2. TDS MetroCom's claims that it is likely to prevail on the merits because the Commission's benchmark rate levels failed to take into account the alleged higher costs of CLECs, that, like TDS MetroCom, serve small- to medium-sized markets. But as the Commission explained to the Court, the Commission found that no CLEC submitted any cost information that would justify their rates and instead simply relied upon general assertions that their costs were higher than those of the incumbent LECs.

Response of FCC in Case No. 01-1280 at 10. A review of TDS MetroCom's comments and reply comments in Docket 96-262 confirms the Commission's finding in this regard.<sup>2</sup> In fact, TDS MetroCom's petition here continues to ask that the Commission accept on blind faith that its costs are higher than the incumbent LEC simply because it is serving small-to medium-sized markets. Given its failure to supply any data to support its claim of higher costs, TDS MetroCom "should not be heard to complain about the Commission's methods" in setting the benchmark levels. Response of FCC in Case No. 01-1280 at 10. In any case, as the Commission found in its recent decision in *AT&T v. Business Telecom Inc. (EB-01-MD-001)* and *Sprint v. Business Telecom Inc. (EB-01-MD-002)*, *Memorandum Opinion and Order*, FCC 01-185 (released May 30, 2001) at ¶¶20-22, costs are not relevant in determining reasonable access rates in instances where there is a market failure and the Commission, consistent with its statutory responsibilities, finds it necessary to constrain the exercise of monopoly power by CLECs. *See also* Response of FCC in Case No. 01-1280 at 12.

---

<sup>2</sup> TDS MetroCom complains that the Commission's failed, contrary to Section 553 of the Administrative Procedure Act, 5 USC §553(c), and Section 1.425 of the Commission's Rules, 47 CFR §1.425 to consider TDS MetroCom's misgivings about the benchmark rate of 2.5 cents recommended by the ALTS as applied to CLECs serving smaller cities and did not consider TDS MetroCom's alternative plan. According to TDS MetroCom, its reply in which it discussed the ALTS plan and presented its alternative plan was filed electronically on January 28, 2001, but was somehow omitted from the Commission's ECFS database for this proceeding and therefore not even read by the Commission. Petition at 5-7. TDS MetroCom does not explain how it knows that its reply comments were omitted from the ECFS database for this proceeding. Sprint, for one, was able to secure a copy of TDS MetroCom's reply comments from the ECFS database for this docket. Nor does TDS MetroCom explain why it believes that the Commission did not take into account its alternative plan. The Commission may not have specifically mentioned TDS MetroCom's alternative proposal in the *Seventh Report*, but this hardly constitutes reversible error. In any event, the substance of the TDS MetroCom's proposal here, *i.e.*, a higher rate for CLECs operating in small and medium sized markets was considered and rejected by the Commission in its evaluation of the rural exemption. *See Seventh Report* at ¶74 (rejecting proposal to have the rural exemption apply to all customers "living outside density zone 1 of the nation's top 50 metropolitan statistical areas (MSAs)").

TDS MetroCom's claim that it will suffer irreparable harm if a stay is not granted is also baseless. TDS MetroCom's argument here is based on the assertion that its "revenue streams and operating margins will be immediately and drastically reduced," thereby jeopardizing its "ability to attract capital" and its expansion plans. Petition at 10, 11. The difficulty with TDS MetroCom's argument here is that the courts have long held that this type of alleged economic loss does not, in and of itself, constitute irreparable injury so as to justify a stay. *See, e.g., Wisconsin Gas., et al. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). *See also* Response of FCC in Case No. 01-1280 at 14-15, 16-17. TDS MetroCom's further claim that it will be unable to attract customers especially if it has to raise its end user rates to make up for the reduction in access revenues from the IXC's, *id.* at 13, is speculative and unsupported. If TDS MetroCom cannot sustain its market presence charging the Commission's generous "safe harbor" rates, its failure would be the product of a flawed business plan, not Commission action. Moreover, there is nothing in the *Seventh Report* that "require[s] the CLECs to raise their end user rates," and that in any case, the CLECs "have no right to any competitive advantages resulting from an old regime, and their loss of any arbitrage opportunity is not a cognizable injury." Response of the FCC in Case No. 01-1280 at 17.

Finally TDS MetroCom's argument that a stay will not harm other parties and would be in the public interest is fanciful. As the Commission explained to the Court, "[a] stay would perpetuate excessive CLEC access charges that undeniably injure all the IXC's and their long-distance customers." *Id.* at 17. Moreover because it "would leave in place distorted market signals that may encourage CLECs to enter markets for the wrong reasons and with the wrong customer emphasis," a stay is simply not in the public interest. *Id.* at 17-18.

In short, TDS MetroCom does not come close to satisfying the standards for securing a stay and its petition her must be denied.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read 'MBF', is written over a horizontal line.

Michael B. Fingerhut

Richard Juhnke

401 9<sup>th</sup> Street NW, Suite 400

Washington, D.C. 20004

(202) 585-1909

Its Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSITION OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 5<sup>th</sup> day of July, 2001 to the parties on the attached list.

  
Christine Jackson

July 5, 2001

Brad E. Mutshelknaus  
Ross A. Buntrock  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
Counsel for e.spire Communications,  
Inc., KMC Telecom, Inc., Talk.com  
Holding Corp., and XO  
Communications, Inc.

Lawrence E. Sarjeant  
Linda Kent  
Keith Townsend  
John Hunter  
Julie E. Rones  
United States Telephone Assoc.  
1401 H Street, NW, Suite 600  
Washington, DC 20005

John H. Harwood II  
Samir Jain  
David M. Sohn  
Julie A. Veach  
Dan L. Poole  
Wilmer, Cutler & Pickering  
2445 M Street, NW  
Washington, DC 20037  
Counsel for US West, Inc.

Herbert E. Marks  
Brian J. McHugh  
Squire, Sanders & Dempsey, LLP  
1201 Pennsylvania Avenue, NW  
P.O. Box 407  
Washington, DC 20044

Mr. Micheal Wilson  
Mr. John Mapes  
Department of Commerce and  
Consumer Affairs  
State of Hawaii  
250 South King Street  
Honolulu, Hawaii 96813

Mitchell F. Brecher  
Debra A. McGuire  
Greenberg Traugott, LLP  
Time Warner Telecom Inc.  
800 Connecticut Avenue, NW  
Washington, DC 20006

Lawrence G. Malone, General Counsel  
Public Service Commission of  
New York State  
Three Empire State Plaza  
Albany, NY 12223-1350

Russell C. Merverth  
Lawrence A. Walke  
Winstar Communications, Inc.  
1615 L Street, NW, Suite 1260  
Washington, DC 20036

Richard L. Fruchterman, III  
Richard S. Whitt  
Worldcom, Inc.  
1120 Connecticut Avenue, NW  
Washington, DC 20036

Michael J. Shortley, III  
Global Crossing North  
America, Inc.  
180 South Clinton Avenue  
Rochester, NY 14646

Mark C. Rosenblum  
Peter H. Jacoby  
AT&T  
295 North Maple Avenue, Room 113L2  
Basking Ridge, NJ 07920

M. Robert Sutherland  
Richard M. Sbaratta  
Bellsouth Corporation  
1155 Peachtree Street, NE, Suite 1700  
Atlanta, GA 30309-3610

Rachel J. Rothstein  
Brent M. Olson  
Cable & Wireless USA, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Colleen Boothby  
Levine, Blasak, Block & Boothby, LLP  
2001 L Street, NW, Suite 900  
Washington, DC 20036  
Counsel for Ad Hoc  
Telecommunications Users Committee

Christopher A. Holt  
Assistant General Counsel  
Regulatory and Corporate Affairs  
CoreComm Limited  
110 East 59<sup>th</sup> Street, 26<sup>th</sup> Floor  
New York, NY 10022

James L. Casserly  
Ghita J. Harris-Newton  
Mintz, Levin, Cohn, Ferriss, Glovsky &  
Popeo, PC  
701 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20004  
Attorneys for CoreComm Limited

Laura H. Phillips  
J.G. Harington  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Ave, NW  
Suite 800  
Washington, DC 20036  
Attorneys for Cox Communications, Inc.

Carol Ann Bishoff, EVP/Gen. Counsel  
Competitive Telecommunications  
Assoc.  
1900 M Street, NW, Suite 800  
Washington, DC 20036

Stuart Polikoff  
OPASTCO  
21 Dupont Circle, NW, Suite 700  
Washington, DC 20036

Peter D. Keisler  
Daniel Meron  
C. Frederick Beckner III  
Sidley & Austin  
1722 I Street, NW  
Washington, DC 20006  
Attorneys for AT&T Corp.



Renee R. Crittendon  
Counsel-Telecommunications  
Prism Communications  
Services, Inc.  
1667 K Street, NW, Suite 200  
Washington, DC 20006

Alan Buzacott  
Henry G. Hultquist  
Worldcom, Inc.  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Charles C. Hunter  
Catherine M. Hannan  
Hunter Communications Law Group  
1620 I Street, NW, Suite 701  
Washington, DC 20006

Edward B. Krachmer, Regulatory Counsel  
Teligent, Inc.  
8065 Leesburg Pike, Suite 400  
Vienna, VA 22182

William L. Fishman  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007

Robert B. McKenna  
Jeffrey Brueggeman  
US West, Inc.  
1801 California Street  
Denver, CO 80202

Lynda L. Dorr, Secretary to the Commission  
Public Service Commission of Wisconsin  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

Robert M. Halpern  
Crowell & Moring, LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004

Alfred G. Richter, Jr.  
Roger K. Toppins  
Michael J. Zpevak  
Thomas A. Pajda  
SBC Communications, Inc.  
One Bell Plaza, Room 3003  
Dallas, TX 75202

John W. Katz, Esquire  
Special Counsel to the Governor  
Director, State-Federal Relations  
Office of the State of Alaska  
444 North Capitol Street, NW  
Suite 336  
Washington, DC 20001

George N. Barclay, Assoc. Gen. Counsel  
Michael J. Ettner, Sen. Asst. Gen Counsel  
Personal Property Division  
General Services Administration  
1800 F Street, NW, Room 4002  
Washington, DC 20405

Snavelly King Majoros O'Connor & Lee  
1220 L Street, NW, Suite 410  
Washington, DC 20005

Kenneth A. Kirley  
Associate General Counsel  
McLeodUSA  
Telecommunications  
Services Inc.  
400 S. Highway 169, No. 750  
Minneapolis, MN 55426

L. Marie Guillory  
Jill Canfield  
Daniel Mitchell  
National Telephone Cooperative  
Association  
4121 Wilson Blvd, Tenth Floor  
Arlington, VA 22203-1801

David A. Irwin  
Tara B. Shostek  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Ave., NW, Suite 200  
Washington, DC 20036  
Counsel for Haxtun Telephone  
Company

Michael J. Bradley  
Richard J. Johnson  
Moss & Barnett  
4800 Norwest Center  
90 South Seventh Street  
Minneapolis, MN 55402-4129  
Counsel for Minnesota CLEC  
Consortium

Douglas A. Dawson, Principal  
Competitive Communications Group,  
Calvert Metro Building  
6811 Kenilworth Avenue, Suite 302  
Riverdale, MD 20737

Eric J. Branfman  
Troy F. Tanner  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
Counsel for BayRing Communciations  
And Lightship Telecom, LLC

Gregory J. Vogt  
William B. Baker  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Dennis D. Ahlers, Senior Attorney  
Eschelon Telecom, Inc.  
730 2<sup>nd</sup> Avenue South, Suite 1200  
Minneapolis, MN 55402-2456

Richard Heatter, Esq.  
MGC Communications, Inc.  
171 Sully's Trail, Suite 202  
Pittsford, NY 14534

Nancy Wilbourn  
Kraskin, Lesse & Cosson, LLP  
2120 L Street, NW, Suite 520  
Washington, DC 20037

Steve Rubin  
Theresa Atkins  
Telergy, Inc.  
One Telergy Parkway  
East Syracuse, NY 13057

Joseph Kahl  
Patrick McGuire  
RCN Telecom Services, Inc.  
105  
Princeton, NJ 08540

Mark DeFalco  
CTSI, Inc.  
100 CTE Drive  
Dallas, PA 18612

Jane Jackson  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 5-A225  
Washington, DC 20554

International Transcription Service\*  
1231 20<sup>th</sup> Street, NW  
Washington, DC 200036

John T. Nakahata  
Harris, Wiltshire & Grannis, LLP  
1200 Eighteenth Street, NW  
Washington, DC 20036  
Counsel for Coalition for Affordable  
Local and Long Distance Service

Donald C. Davis  
Claudia Earls  
Z-Tel Communications, Inc.  
601 South Harbour Island, Blvd.  
Tampa, FL 33602

Gail L. Polivy  
Michael E. Glover, Of Counsel  
Edward Shakin, Of Counsel  
Affiliated Verizon Companies  
1850 M Street, NW, Suite 1200  
Washington, DC 200036

Margot Smiley Humphrey  
David A. O'Connor  
Holland & Knight LLP  
Suite 100  
2099 Pennsylvania Ave., NW  
Washington, DC 20006

Jonathan Askin, Vice President-Law  
Emily Williams, Senior Attorney  
The Association for Local  
Telecommunications Services  
888 17<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20006

Carolyn C. Hill  
Alltel Communications, Inc.  
Suite 720  
601 Pennsylvania Ave., NW  
Washington, DC 20004

Robert W. McCausland  
Mary C. Albert  
Allegiance Telecom, Inc.  
1950 Stemmons Freeway, Suite 3026  
Dallas, Texas 75207-3118

Commissioner Kathleen Abernathy\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B201  
Washington, DC 20554

Russell M. Blau  
Patrick Donovan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
Counsel for Allegiance Telecom, Inc.

Albert H. Kramer  
Robert F. Aldrich  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, NW  
Washington, DC 20037-1526  
Attorneys for the American Public  
Communications Council

Joseph DiBella  
Michael E. Glover  
Bell Atlantic  
1320 North Courthouse Road  
8<sup>th</sup> Floor  
Arlington, VA 22201

Jonathan E. Canis  
Charles M. Oliver  
Enrico Soriano  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20036  
Attorneys for The Association for  
Local Telecommunications Services

Patricia D. Kravtin  
Scott C. Lundquist  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02108-2617  
Economic Consultants for Ad Hoc  
Telecommunications Users Committee